

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION
CASE NO. 1:12-cv-800-WTL-TAB

JUDICIAL WATCH, INC.,)
and TRUE THE VOTE,)
Plaintiffs,)
v.)
J. BRADLEY KING, et al.)
Defendants.)

ORIGINAL

The deposition upon oral examination of
J. BRADLEY KING, a witness produced and sworn before
me, Rachel L. Tookolo, a Notary Public in and for the
County of Hamilton, State of Indiana, taken on behalf
of the Plaintiffs at the Indiana Government Center,
South Building, 302 West Washington Street, Conference
Room 5, Indianapolis, Marion County, Indiana,
commencing on the 30th day of May, 2013, pursuant to
the Applicable Rules of Procedure with notice as to
time and place thereof.

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1 occasions where individuals within a county, say
2 one member of the county for voter registration,
3 would raise a issue or a problem, and we would
4 respond with either information or instructions
5 about the requirements to be followed and to
6 correct the problem. But no, not exactly in the
7 format under the Decree.

8 Q Anything else you can remember under either the
9 Consent Decree or the Compliance Plan that was
10 produced in that Decree?

11 A No, nothing beyond what I already addressed.

12 Q Beyond the issues we've just discussed, are any
13 parts of either the Consent Decree or the
14 Compliance Plan produced under that Decree still
15 being followed by you and your Co-Director?

16 A I'm not sure I understand exactly the scope of the
17 question. I would say that, yes, we're certainly
18 making a reasonable effort to comply with federal
19 NVRA.

20 Q And beyond the reasonable effort, are there any
21 specific kind of additional or enumerated, I
22 guess, requirements in either that Consent Decree
23 or the Compliance Plan that you had begun in
24 response to that lawsuit and are still doing?

25 A I would say probably the most significant

1 component would be the training aspect. We have,
2 of course, had training continuously since the
3 implementation of NVRA in 1995, but we certainly
4 developed additional products, more detailed
5 information as part of our training efforts with
6 the County Voter Registration Officials. So yes,
7 that -- that is certainly ongoing.

8 Q So between the period from 2009 -- the expiration
9 of the voter roll -- and the present, was there a
10 change in the condition of the voter registration
11 lists in Indiana?

12 MR. JEFFERSON GARN: Just a quick
13 objection for clarification. You said expiration
14 of the voter rolls.

15 Q Oh, I apologize. The expiration of the Consent
16 Decree in 2009 and the present, did the condition
17 of the voter rolls in Indiana change in terms of
18 their accuracy and currency?

19 A The hard for me to give an answer that's more than
20 speculative, I guess. The -- it's clear that the
21 designation of inactive voters is continuing in
22 the manner that it did under the Consent Decree,
23 that the process is taking place, and
24 cancellations are taking place. We have had an
25 increase in the total number of registered voters,

1 but that can be accounted for from a variety of
2 reasons.

3 Q You said earlier that the -- there was agreement
4 that there had been improvement in the accuracy
5 and currency of the voter rolls between 2006 and
6 2009?

7 A Yes.

8 Q Do you know if there was a similar improvement
9 between 2009 and 2012?

10 A No, I don't know. I would say there, in my
11 opinion, there was not a similar improvement in
12 terms of the scope. There were large numbers of
13 records that were either inactivated or canceled
14 during that first period that reflected the
15 absence of doing that for several years before.

16 Q And one of the activity undertaken pursuant to
17 that Consent Decree was a statewide mailing for
18 removing relocated voters?

19 A That's correct.

20 Q And when was that mailing undertaken, if you
21 remember?

22 A That was following the May 2006 Primary and then
23 concluded the first part of August 2006.

24 Q And that had the effect of removing a number of
25 voter registrations and moving them to inactive,

1 starting with the period between 2006 and 2009?

2 A Yes.

3 Q And about how many counties did those mailings to
4 the best of your knowledge?

5 A I would guess in the neighborhood of five to ten.

6 Q And --

7 A Particularly -- I know some of the -- I recall off
8 the top Monroe, which is where Bloomington is
9 located, and I believe Allen County may have done
10 one during the time period.

11 Q And after the expiration of the Consent Decree
12 between the period of 2009 and 2012, did some
13 counties do countywide voter list maintenance --
14 mailings?

15 A Yes, they did.

16 Q And about how many counties to the best of your
17 memory?

18 A About the same number, perhaps. Probably no more
19 than five.

20 Q Okay. Was there any information that the Election
21 Division was entering into the SVRS System either
22 through to vendors or distributing to counties
23 during the period of the Consent Decree that the
24 Election Division had not been maintaining earlier
25 than that?

1 Assistance Program would -- the interactions there
2 would be to facilitate voter list maintenance for
3 military or overseas voters voting absentee but
4 who might also change their voter registration
5 records.

6 Q So does the FVAP --

7 A The --

8 Q Oh, sorry.

9 A The Federal Voting Assistance Program, which is
10 part of the Department of Defense -- and then
11 beyond that, we would receive information
12 regarding individuals convicted of federal crimes
13 from the various district attorneys.

14 Q And the district attorneys send that information
15 to your office?

16 A Yes, they did.

17 Q And then typically your procedure is to send it to
18 -- make sure it's entered into the SVRS System and
19 distribute it to the counties for action?

20 A We do distribute to the counties. We do not enter
21 the raw data into the Statewide Voter Registration
22 System.

23 Q And you mentioned earlier under the new
24 legislation the State would be obtaining NCOA
25 database information from the U.S. Postal Service;

1 is that right?

2 A Yes, that would be correct.

3 Q And had that been done previously?

4 A Not in the fashion that I believe the legislation
5 envisions. The NCOA information regarding address
6 forwarding orders, for example, is not one that
7 we've obtained previously from the Postal Service.
8 We have had some data, like checking the validity
9 of an address when it's entered into the system.

10 Q Were there any discussions between you and the
11 Co-Director about obtaining that information
12 previously?

13 A During the period prior to the Consent Decree, I
14 believe there was. But again, my counterpart did
15 not indicate a willingness or interest in doing
16 that. I don't recall any discussions about that
17 afterwards.

18 Q Do you remember your counterpart's rationale for
19 not wanting to obtain that information?

20 A I think, again, it focused on reliability of data.
21 I recall that, again, in one county -- in
22 Monroe -- the County Voter Registration Office had
23 initiated its own NCOA program and had reported
24 problems with false matches or incorrect
25 information. And so I think my counterpart

1 DIRECT EXAMINATION (Continuing),

2 QUESTIONS BY MR. CHRIS FEDELI:

3 Q Let's move on. So we're talking about the United
4 States attorneys for the Indiana districts.

5 MR. CHRISTIAN ADAMS: It's a U.S.
6 Attorney. There's only one kind.

7 Q So these would be providing you information about
8 convictions, I guess, at some intervals. What is
9 the frequency of those?

10 A I would believe about monthly. I would -- I would
11 just add: I think we receive reports of
12 convictions from other U.S. District Attorneys
13 where there's an Indiana resident involved, and
14 those may be quarterly or -- or as they occur.

15 Q And tell me a little bit about the use of jury
16 declinations for voter list maintenance. When did
17 that program start in Indiana to your memory?

18 A We had had -- I say "we" -- at least I had had
19 questions about whether jury service notices could
20 be used under NVRA to trigger the follow-up
21 mailing that leads to a voter being classified as
22 inactive. But then I believe I heard from an
23 individual county that the judge who, in each case
24 approves the questionnaire that goes out, had
25 requested the line be added that if a person who

1 received the notice was no longer a resident of
2 this county did they authorize their registration
3 to be canceled. And I thought that sounded like a
4 perfectly sensible, efficient idea for voter list
5 maintenance. And so beginning many years ago, I
6 would guess before 2002, we had included
7 information in our Voter Registration Guidebook
8 that had a sample jury questionnaire from one of
9 the counties using this approach, and I believe
10 more and more counties have adopted it. I don't
11 know how many of them do.

12 Q So you mentioned it was initially proposed or
13 written up in the Guidebooks around 2002?

14 A Yes. As I say, it's been a number of years and so
15 I would not be surprised if it were that long ago.

16 Q And then during the period of the Consent Decree,
17 2006 to 2009, did the use of those -- did the use
18 of jury declinations change in terms of frequency
19 or requirement?

20 A I don't know. I would assume more counties avail
21 themselves of it because at the various
22 conferences we have, we'll often mention that as a
23 tool if a county is not using it. We have a
24 fairly large turnover of the County Voter
25 Registration Offices who, in most cases, are

1 are partial mailings that can comply with that
2 requirement. For example, as a courtesy, not as a
3 requirement in Indiana law, County Voter
4 Registrations Offices will often send a mailing to
5 every voter in a precinct when polling places
6 change, and my advice to them has been that so
7 long as that procedure is followed whenever any
8 precinct's polling place change, that it's done
9 uniformly going forward, that I believe they're in
10 compliance with the statute.

11 Q And was that a subject you ever discussed with
12 your Co-Director?

13 A Only in the context of preparing publications. I
14 don't recall any other discussions about it.

15 Q And what was that discussion?

16 A Just the extent to which we would describe the
17 uniform nondiscriminatory mailing requirement. I
18 recall one particular discussion where I had
19 discovered a guide that the old Federal Election
20 Commission Office had prepared when it was
21 involved in the implementation of NVRA, which in
22 the FEC publication listed types of mailings that
23 could trigger the follow-up notice for inactive,
24 and so persuaded by colleague that we could add
25 those to our publication because we had some FEC

1 A Yes, it is. It's in Indiana code.

2 Q So one of your responsibilities is to ensure that
3 the State is conducting a program -- a reasonable
4 program for maintaining accurate voter rolls,
5 correct?

6 A That's correct.

7 Q And tell me a little bit about how you understand
8 that obligation. What's your -- what's your
9 general sense of what it means to conduct a
10 reasonable program for maintaining accurate voter
11 rolls?

12 MR. JEFFERSON GARN: Objection to
13 the extent you're asking for him to make a legal
14 conclusion.

15 A I think it involves two components. The first is
16 our office's core function of serving as a source
17 for information and training to make sure that the
18 County Voter Registration Officials understand the
19 requirements of federal and state law and then
20 carry them out. The -- the other piece is
21 efficiently managing the resources we have
22 available to do our job, which of course includes
23 not just appropriations from the General Assembly,
24 but a staff of a limited size.

25 Q And would these reasonable efforts in both

1 educating counties, advising, and managing
2 resources, those would include specific activities
3 at specific times in your view?

4 A Yes. The election cycle, of course, dictates to
5 some extent which activities come to the front.
6 Probably the two biggest factors would be the
7 scheduling of general elections and the influx of
8 voter registrations that typically precedes them.
9 And then immediately prior to that, the 90-day
10 deadline for completion of most voter list
11 maintenance work.

12 Q Would the activities that your office would
13 undertake to comply with this provision, would it
14 matter whether or not the voter rolls were in very
15 accurate condition, or less accurate condition; in
16 other words, would that variable affect what you
17 viewed as your responsibilities under the NVRA?

18 A I suppose it's difficult to -- it's a question of
19 degree. We operate with the understanding that
20 the voter registration rolls will never be
21 completely accurate. There is going to be some
22 data that changes every day. So I guess I would
23 say: No, I don't believe that the relative
24 accuracy has at least a direct impact on the
25 ability of our office to carry out those

1 asked, if you can remember?

2 A Just whether they had had problems with either
3 their Department of Health hopper. In the past,
4 there had been some data backlogs that we had
5 experienced and worked with the Department of
6 Health to correct. I don't think we had any
7 discussion about Department of Correction. In
8 terms of Bureau of Motor Vehicles, usually the
9 questions involved processing the paper copies
10 that arrived, along with electronic copies, to
11 make sure that address changes or other
12 information was getting their attention promptly.
13 I know at least one county that I believe
14 subsequently did carry out a mailing -- Warrick
15 talked with us about the mechanics and
16 requirements for doing a countywide mailing.

17 Q And when you had asked those questions, did you
18 uncover -- first starting with the first item you
19 mentioned -- did you uncover problems with the DOH
20 hopper?

21 A There had been previous problems, but I don't
22 think there were any new problems uncovered as a
23 result of these conversations.

24 Q And previous problems -- you're talking about
25 problems in the years gone past?

1 general operating expense of the office, it's
2 about 1.2 million a biennium -- or excuse me, 1.2
3 for each year of the biennium. But that's a small
4 part of the budget as it exists now because we
5 have the budget coming up effective July 1st that
6 calls for five million for the biennium to operate
7 the Statewide Voter Registration System, 2.1 to do
8 the voter list maintenance activities, and then an
9 additional 1.5 million for voter outreach, and an
10 additional five hundred thousand for our voting
11 system technical oversight program.

12 Q And that's the new budget?

13 A That is the new budget effective July 1st. Our
14 current -- the budget we're currently operating
15 other has a smaller amount for system operation
16 because that was largely funded by federal funds
17 under Help America Vote Act, which are in
18 expended.

19 Q Expended. So going back, I guess, to the prior
20 year's budget, how much was allocated for SVRS
21 operation maintenance?

22 A Well, altogether the entire amount of the
23 appropriation -- I believe it was 4 million in
24 total. Our contracts total the 3.93 million, as I
25 remember. That included both services with Quest

1 their agenda.

2 Q Spent a lot of time talking about the structure of
3 the Division with the Co-Directors and it's
4 bipartisan nature. What -- have there been any
5 times when you've seen a benefit to having that
6 kind of structure?

7 A I think the benefit is one that's derived from
8 having another set of eyes, another perspective,
9 look at a situation or address a problem. We're
10 not a large agency. We have a total of ten
11 individuals, including myself and my counterpart,
12 and so we often review each other's work and
13 assist with tasks. And so having that additional
14 eye and perspective is a benefit. I think the
15 problem that I noted earlier was the gridlock that
16 can result from the structure as it was at least
17 prior to this year.

18 Q Now, right now as far as political parties in the
19 different branches of government in Indiana, is
20 there -- a Republican is governor now?

21 A Yes.

22 Q And is there a majority in the House -- in the
23 General Assembly are both Houses, are they both
24 Republican as well?

25 A Both chambers are. We have a majority of

1 disagree on everything?

2 A Oh, certainly not.

3 Q Do you disagree on a lot?

4 A I would say that roughly 90 percent of our work
5 does not have a partisan element to it. Just in
6 preparation for the campaign finance enforcement
7 hearings I mentioned earlier, we worked together
8 with how our staff will present those hearings.

9 We very rarely have a disagreement on that sort of
10 work in the office.

11 Q You also talked a lot about the Consent Decree
12 with the Department of Justice. Since the
13 expiration of the Consent Decree, has the
14 Department of Justice brought any action against
15 either the Election Division or the State of
16 Indiana with respect to voter list maintenance?

17 A I don't believe -- I'm not aware of any.

18 Q Let's talk about the statewide mailing in 2006.
19 You said that there was funding available during
20 that time. Do you know where that funding came
21 from for that?

22 A Yes. We had received funding through the Help
23 America Vote Act. Some of that funding was
24 restricted in terms of its usage, but other
25 funding was available to generally improve the

1 administration of federal elections. And so that
2 particular account was the source we used to pay
3 mailing costs and processing.

4 Q So the did that come from the federal government?

5 A Yes. It was a 95 percent/5 percent state match, I
6 believe. But yes, almost entirely from federal
7 government.

8 Q Does -- does the NVRA require annual statewide
9 mailings that you're aware of?

10 A No.

11 Q We've talked a lot about the SVRS as well --
12 you've talked a lot about that, I should be clear.
13 Is the SVRS -- is that a static system or have
14 there been changes to it over the years.

15 A Oh, it's been a evolving system since the
16 beginning. We build into our budget for its
17 operation upgrades to reflect changes in
18 legislation or feedback from County Voter
19 Registration Offices about ways to make the system
20 work more efficiently. So yes, we spend a
21 significant amount of time to identify the changes
22 we need to make and a fair amount of money to make
23 it.

24 Q Why do you want to make it more efficient?

25 A Well, because I think it's the responsibility of

1 any public office to the taxpayers to reduce costs
2 and also to improve in confidence and the
3 integrity of the election process. This accuracy
4 of the system contributes to that.

5 Q Does the NVRA require states to use the Social
6 Security Death Index as part of voter list
7 maintenance?

8 A No.

9 Q Do they require the use of NCOA data for -- I
10 should be more clear on that one. Scratch that.
11 Do you know what the NVRA requires with respect to
12 NCOA notices?

13 A Well, it's in reference to the procedures to make
14 a record inactive. That's the reference I'm
15 recalling immediately. We sometimes refer to the
16 second mailing as the NCOA notice because it's the
17 result of an initial mailing that's been returned
18 with typically a yellow sticker that reflects data
19 from the NCOA program.

20 Q You mentioned you're in conversation with the
21 counties about the SVRS. Do you get a lot of
22 suggestions from them?

23 A Yes. Perhaps fewer than when we first implemented
24 the system, but we have what we call a CAT, or
25 County Advisory Team, conference call more

1 frequently during election years where we receive
2 suggestions from county users that are focused on
3 system improvement.

4 Q And then when you go to -- you talked about the
5 meetings of the organization -- I forget off the
6 top of my head. The National Association of --

7 A State Election Directors.

8 Q -- State Election Directors. Why do you go to
9 those meetings? Just a basic question.

10 A Well, I served as President of the Association
11 last year, so I had to go. But it's -- I've been
12 very involved in the Association for many years
13 and I was finding it a valuable place to receive
14 information about litigation, federal legislation,
15 best practices from other states. So it was a
16 very good source of information sharing.

17 Q Is there much guidance from the federal government
18 as to how to carry on voter list maintenance
19 besides the NVRA itself? Are there agencies that
20 provide information?

21 A Well, there have sometimes been agencies or
22 individuals of that agency who have been willing
23 to share information about the administration. I
24 think a good example under the Consent Decree --
25 we had questions that we posed to the Department

1 of Justice in 2006 on definition of terms, and the
2 schedule for implementation, and they were very
3 responsive at that point in providing answers. At
4 other times earlier and since, I would say less
5 so. There is the Election Assistance Commission
6 which provides information about the broader
7 aspects of election administration, not
8 necessarily focused on voter list maintenance.

9 Q We also talked a little bit about conferences with
10 -- well, let me -- scratch that. Do you do any
11 training? Do you personally do any training of
12 County Clerks?

13 A Yes.

14 Q Can you talk about that a little bit? What
15 happens?

16 A We have an annual conference of County Election
17 Administrators, which would include the 92 Clerks
18 plus voter registrations staff in each of the
19 counties. In recent years, our attendance has
20 been between 375 and 400. So it's a very large,
21 well-attended conference. It lasts for a
22 day-and-a-half and we always have significant
23 opportunity for training in general on SVRS, and
24 oftentimes before regional meetings of the clerks'
25 association -- which happen at least twice a

1 year -- we authorize an employee of Quest to
2 provide training to individuals the day before
3 those meetings so that we have -- new people
4 especially have the opportunity to get training
5 using the system with their peers. And then also
6 on occasion when we've had, say, complete turnover
7 in an office, we've sent Quest employees to that
8 county to provide training on their turf.

9 Q At that training, do you ever encourage in any way
10 the County Clerks to contact you about any issues
11 they may have?

12 A Oh, yes. Certainly.

13 Q How do you do that?

14 A By making repeated invitations both in writing and
15 during an oral presentation. We want to encourage
16 questions and we realize, too, that in a room full
17 of 400 people, some individuals might be reluctant
18 to stand up and ask what might seem like a silly
19 question, so we will accept anonymous written
20 questions out of the box, whatever it takes to
21 encourage them to ask.

22 Q Do people ever take you up on that offer?

23 A Yes. Yes.

24 Q Do you ever provide training materials or
25 materials about -- generally about voter list

1 provisions.

2 Q With your extensive experience in state
3 government, do you see a lot of that compromising
4 going on in what you do?

5 A Well, certainly not -- obviously, our process is
6 very different than the federal legislative
7 process. Certainly, when there's divided control
8 of the chambers, there is very similar compromise
9 that's attempted and negotiations that occur, but
10 some features such as the filibuster are not part
11 of the Indiana process typically, although there
12 have been occasions where quorums are very
13 difficult to find.

14 Q Do you think there are a number of reasonable
15 efforts a state or county may undertake to perform
16 voter list maintenance?

17 A By "a number," do you mean a variety or a --

18 Q (An affirmative nod.)

19 A Yes.

20 Q Does the -- do you know if the NVRA mandates that
21 a state or county undertake all reasonable efforts
22 to maintain voter list maintenance?

23 A No, I believe it refers to a reasonable program,
24 which I take to include a certain number of
25 activities but not every conceivable activity.

1 promptly to correspondence from the Election
2 Division with regard to cancellation of inactive
3 voters that had been on the rolls for more than
4 the two general election period. I'm thinking of
5 Marion County as the most prominent example of
6 that some years ago. So we never had someone tell
7 us, "No, absolutely not."

8 Q Did you do anything -- with that particular
9 example in Marion County, did the Election
10 Division -- was there any communication or was
11 there anything done with the delay in the inactive
12 voter --

13 A Yes. We documented the requirements and the
14 responsibility of the county, and I believe we
15 copied the Department of Justice on the
16 correspondence as well. So we brought it to
17 everyone's attention and urged them strenuously to
18 do that particular bit of voter list maintenance.

19 Q Are you aware of any -- you mentioned -- used the
20 phrase "overzealous maintenance". Have you ever
21 seen any examples of that?

22 A I'd hesitate to use the adjective "overzealous" in
23 what I have seen. I have seen people who applied
24 common sense rather than -- what they perceived as
25 common sense anyway -- to a situation rather than

1 A Yes.

2 Q Can you talk about that a little bit?

3 A Certainly. The features of the National Voter
4 Registration Act that preclude individuals who are
5 closest to the information from promptly conveying
6 that I think are the most problematic. NVRA, with
7 the exception of where the change is initiated by
8 the voter, requires this data to go through a
9 pipeline before it gets to the County Voter
10 Registrations Office whereas the days prior to the
11 National Voter Registration Act, states could
12 permit an individual who knew their neighbor had
13 moved to let the County Voter Registrations Office
14 know that their neighbor had moved, and there were
15 safeguards in place under -- at least in
16 Indiana -- under that system so if there was a
17 mistake or some malicious action that the voter
18 did not lose the right to vote.

19 But I think the provisions in NVRA that block
20 that local, most knowledgeable part of the
21 population from helping keep the rolls clean is a
22 definite limitation that does not help the voter
23 list maintenance. I think the time period for
24 inactivation, which can be as long as four years,
25 is excessive in that it perhaps fails to recognize

1 just how mobile the society is and that, to my
2 surprise, some people move once a year. And we're
3 delayed by that two general election restriction
4 from, again, getting that bunch of inactives
5 through the system.

6 Q Even with the NVRA in place, you mentioned -- you
7 talked about having things handled at the local
8 level. Even with NVRA and any difficulties that
9 may be associated with its different provisions,
10 do you think there is benefit to having election
11 matters handled at a more local level?

12 A Philosophically, yes. I certainly do not believe
13 that all wisdom come from Indianapolis and that
14 there are times when -- that the judgment calls
15 are difficult. There are sometimes records that
16 are ambiguous. There are situations that are not
17 clear. And I would not pretend to have the same
18 level of knowledge about Greenwood and Johnson
19 County that Johnson County Clerk's Office has.

20 Q Have you ever had -- are you aware of any time
21 when a county flat out refused to carry out its
22 obligations -- its voter list maintenance
23 obligations?

24 A Not flat out refused. There certainly were one or
25 two occasions where counties did not respond

1 A Yes.

2 Q So it's fair to say that no records have been
3 produced in response to that request to your
4 knowledge?

5 A To my knowledge, no.

6 Q Mr. Garn asked you a series of questions about
7 past legislative sessions when election integrity
8 measures had been considered. Could they have
9 passed in any of these past sessions, in your
10 opinion?

11 A That's difficult to answer. I'll say that some
12 certainly could not have passed while there was
13 divided control of the General Assembly. In 2012,
14 there was significant controversy involving the
15 then incumbent Secretary of State, which led the
16 legislature to not take much action on election
17 legislation. So yes, some of those circumstances
18 were different then. I can imagine at least some
19 of them would have passed in previous years.

20 Q And between 2005 and 2012, which years in there
21 were both Houses controlled by Republicans?

22 A The Republicans had control in 2005 and 2006. The
23 Democrats had control in 2007 through 2010, and it
24 was following the 2010 Election that the
25 Republicans regained control of the House.